

STATE OF CALIFORNIA
ENVIRONMENTAL PROTECTION AGENCY
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

In the Matter of:

Smith Systems Transportation, Inc.
11631 Clark Street, Suite #101
Arcadia, California 91006

EPA ID# NED 986382133
Respondent.

Docket No. HWCA 2005-0878

CONSENT ORDER

Health and Safety Code
Section 25187

The State Department of Toxic Substances Control (Department) and Smith Systems Transportation, Inc. (Respondent) enter into this Consent Order and agree as follows:

1. Respondent transports hazardous waste at 11631 Clark Street, Suite 101, Arcadia, California 91006 (Site).

2. The Department inspected the Site on June 23, 2005.

3. The Department alleges the following violations:

3.1. The Respondent violated Health and Safety Code section 25201 subdivision (a), in that on January 21, 2005 through June 15, 2005, Respondent stored hazardous waste in excess of the ten (10) days allowed under the transfer exemption without a permit or grant of authorization from the Department.

3.2. The Respondent violated California Code of Regulations, title 22, section 66263.21, subdivisions (a) (1), in that on March 3, 2005, Respondent failed to deliver the entire quantity of hazardous waste which Smith Systems Transportation, Inc., had accepted from American Faucet to the designated TSD facility identified on the manifest as Teris –Wilmington.

1 3.3. The Respondent violated California Code of Regulations, title 22,
2 section 66263.20, subdivisions (g) (1), in that between March 16, 2005 and June 23,
3 2005, Respondent failed to obtain the date of delivery and handwritten signature of the
4 receiving facility.

5 4. The parties wish to avoid the expense of litigation and to ensure prompt
6 compliance.

7 5. Jurisdiction exists pursuant to Health and Safety Code section 25187.

8 6. Respondent waives any right to a hearing in this matter.

9 7. This Consent Order shall constitute full settlement of the violation alleged
10 above, but does not limit the Department from taking appropriate enforcement action
11 concerning other violations.

12 8. Respondent admits the alleged violations above.

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15 SCHEDULE FOR COMPLIANCE

16 9. Respondent shall comply with the following:

17 9.1. Respondent has corrected the violation cited on 3.1 above.
18 Respondent shall operate hereafter in a manner that shall prevent recurrences of the
19 violation cited herein.

20 9.2. Effective immediately, Respondent shall count each container that
21 is loaded onto its vehicles before signing off on the Hazardous Waste Manifest. The
22 Respondent shall comply with the manifest requirements as listed under California
23 Code of Regulations, title 22, section 66263.21.

24 9.3. Respondent hereby agrees to send one employee to California
25 Compliance School, Modules I – IV. Attendance must be completed by the attending
26 representative and Respondent must submit a Certificate of Satisfactory Completion
27 issued by the California Compliance School to the Department of Toxic Substances
28 Control (DTSC) within 185 days of the date of this Order.

1 9.4. Submittals: All submittals from Respondent pursuant to this
2 Consent Order shall be sent to:

3 Mukul Agarwal, Unit Chief
4 Statewide Compliance Division
5 1011 North Grandview Avenue
6 Glendale, California 91201

7 10. Communications: All approvals and decisions of the Department made
8 regarding such submittals and notifications shall be communicated to Respondent in
9 writing by a Branch Chief, Department Of Toxic Substances Control, or his/her
10 designee. No informal advice, guidance, suggestions, or comments by the Department
11 regarding reports, plans, specifications, schedules, or any other writings by Respondent
12 shall be construed to relieve Respondent of its obligation to obtain such formal
13 approvals as may be required.

14 10.1. Department Review and Approval: If the Department determines
15 that any report, plan, schedule, or other document submitted for approval pursuant to
16 this Consent Order fails to comply with the Order or fails to protect public health or
17 safety or the environment, the Department may return the document to Respondent with
18 recommended changes and a date by which Respondent must submit to the
19 Department a revised document incorporating the recommended changes.

20 10.2. Compliance with Applicable Laws: Respondent shall carry out
21 this Order in compliance with all local, State, and federal requirements, including but not
22 limited to requirements to obtain permits and to assure worker safety.

23 10.3. Endangerment during Implementation: In the event that the
24 Department determines that any circumstances or activity (whether or not pursued in
25 compliance with this Consent Order) are creating an imminent or substantial
26 endangerment to the health or welfare of people on the site or in the surrounding area
27 or to the environment, the Department may order Respondent to stop further
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1 implementation for such period of time as needed to abate the endangerment. Any
2 deadline in this Consent Order directly affected by a Stop Work Order under this section
3 shall be extended for the term of such Stop Work Order.

4 10.4. Liability: Nothing in this Consent Order shall constitute or be
5 construed as a satisfaction or release from liability for any conditions or claims arising
6 as a result of past, current, or future operations of Respondent, except as provided in
7 this Consent Order. Notwithstanding compliance with the terms of this Consent Order,
8 Respondent may be required to take further actions as are necessary to protect public
9 health or welfare or the environment.

10 10.5. Site Access: Access to the Site shall be provided at all
11 reasonable times to employees, contractors, and consultants of the Department, and
12 any agency having jurisdiction. Nothing in this Consent Order is intended to limit in any
13 way the right of entry or inspection that any agency may otherwise have by operation of
14 any law. The Department and its authorized representatives may enter and move freely
15 about all property at the Site at all reasonable times for purposes including but not
16 limited to: inspecting records, operating logs, and contracts relating to the Site;
17 reviewing the progress of Respondent in carrying out the terms of this Consent Order;
18 and conducting such test as the Department may deem necessary. Respondent shall
19 permit such persons to inspect and copy all records, documents, and other writings,
20 including all sampling and monitoring data, in any way pertaining to work undertaken
21 pursuant to this Consent Order.

22 10.6. Sampling, Data, and Document Availability: Respondent shall
23 permit the Department and its authorized representatives to inspect and copy all
24 sampling, testing, monitoring, and other data generated by Respondent or on
25 Respondent's behalf in any way pertaining to work undertaken pursuant to this Consent
26 Order. Respondent shall allow the Department and its authorized representatives to
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1 take duplicates of any samples collected by Respondent pursuant to this Consent
2 Order. Respondent shall maintain a central depository of the data, reports, and other
3 documents prepared pursuant to this Consent Order. All such data, reports, and other
4 documents shall be preserved by Respondent for a minimum of six years after the
5 conclusion of all activities under this Consent Order. If the Department requests that
6 some or all of these documents be preserved for a longer period of time, Respondent
7 shall either comply with that request, deliver the documents to the Department, or
8 permit the Department to copy the documents prior to destruction. Respondent shall
9 notify the Department in writing at least six months prior to destroying any documents
10 prepared pursuant to this Consent Order.

11 10.7. Government Liabilities: The State of California shall not be liable
12 for injuries or damages to persons or property resulting from acts or omissions by
13 Respondent or related parties specified in paragraph 12.2, in carrying out activities
14 pursuant to this Consent Order, nor shall the State of California be held as a party to
15 any contract entered into by Respondent or its agents in carrying out activities pursuant
16 to this Consent Order.

17 10.8. Incorporation of Plans and Reports: All plans, schedules, and
18 reports that require Department approval and are submitted by Respondent pursuant to
19 this Consent Order are incorporated in this Consent Order upon approval by the
20 Department.

21 10.9. Extension Requests: If Respondent is unable to perform any
22 activity or submit any document within the time required under this Consent Order, the
23 Respondent may, prior to expiration of the time, request an extension of time in writing.
24 The extension request shall include a justification for the delay.

25 10.10. Extension Approvals: If the Department determines that good
26 cause exists for an extension, it will grant the request and specify in writing a new
27 compliance schedule.
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1 PAYMENTS

2 11. Respondent shall pay the Department a total of \$20,161 as a penalty. The
3 payments shall be paid in one (1) initial installment of \$10,000 and two (2) installments
4 of \$5,080.50 every six (6) months. The first installment in the amount of \$10,000 is due
5 and payable on February 1, 2006. The two (2) installments of \$5,080.50 each are due
6 and payable as follows: on August 1, 2006 and February 1, 2007. Any installment
7 payment that is received by the Department more than 15 days after it is due will be
8 subject to a \$250 penalty. Such penalty shall be paid by Respondent no later than the
9 due date of the next installment payment. If the Respondent fails to make a full
10 installment payment within thirty (30) days of its due date, then the Department, at its
11 option, may declare the entire balance of the outstanding penalty due and owing. If
12 Respondent fails to make any payment timely as provided above, Respondent agrees
13 to pay interest thereon at the rate established pursuant to Health and Safety Code
14 section 253600.1. Respondent further agrees to pay all cost and attorney's fees
15 incurred by the Department in pursuing the collection of any sums the payment of which
16 becomes delinquent hereunder. Respondent's checks shall be made payable to
17 Department Of Toxic Substances Control, and shall be delivered together with the
18 attached Payment Voucher to:
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21 Department of Toxic Substances Control
22 Accounting Office
23 1001 I Street, 21st Floor
24 P. O. Box 806
25 Sacramento, California 95812-0806

26 A photocopy of the checks shall be sent to:
27 Mukul Agarwal, Unit Chief
28 Statewide Compliance Division
Department Of Toxic Substances Control
1011 North Grandview Avenue
Glendale, California 91201

1 OTHER PROVISIONS

2 12. Additional Enforcement Actions: By agreeing to this Consent Order, the
3 Department does not waive the right to take further enforcement actions, except to the
4 extent provided in this Consent Order.

5 12.1. Penalties for Noncompliance: Failure to comply with the terms of
6 this Consent Order may subject Respondent to civil penalties and/or punitive damages
7 for any costs incurred by the Department or other government agencies as a result of
8 such failure, as provided by Health and Safety Code section 25188 and other applicable
9 provisions of law.

10 12.2. Parties Bound: This Consent Order shall apply to and be binding
11 upon Respondent and its officers, directors, agents, receivers, trustees, employees,
12 contractors, consultants, successors, and assignees, including but not limited to
13 individuals, partners, and subsidiary and parent corporations, and upon the Department
14 and any successor agency that may have responsibility for and jurisdiction over the
15 subject matter of this Consent Order.

16 12.3. Effective Date: The effective date of this Consent Order is the
17 date it is signed by the Department.

18 12.4. Integration: This agreement constitutes the entire agreement
19 between the parties and may not be amended, supplemented, or modified, except as
20 provided in this agreement.
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23 Dated: 12/3/05

Original signed by Monte W. Smith, President
Smith Systems Transportation, Inc.
Respondent

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26 Dated: 12/19/05

Original signed by Florence Pearson Gharibian
Department Of Toxic Substances Control